LAND USE REGULATORY SYSTEM (ZONING)

RESERVATION OF LAND FOR FUTURE PUBLIC NEEDS

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In addition to this Training Brochure, the Project published copies of the Zoning Ordinances for Kazan, Samara, and Vyborg and special studies on the following issues: The Development Process on Leased Land, Subdivision, Interjurisdictional Land Issues, Servitudes, Historical and Cultural Preservation, and Environmental Protection and Land Use Regulation. The Project also published an aperiodic newsletter addressing land use issues and a training brochure.

Copies of these materials and additional information on zoning and land use may be obtained from the following organizations and individuals:

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Table of Contents

Conclusions
Appendices

Summary and Purpose of This Manual

This manual on the Reservation of Land for Future Public Use has been prepared to address specific issues confronting Russian cities as they undergo a process of land privatization and the development of real estate markets. The manual has been prepared in conjunction with a model program to prepare land use and development regulations in several Russian cities. The program was initiated in the cities of Tver, Novgorod, Irkutsk and the Puskin district and Block 130 of St. Petersburg. It was later expanded to include the cities of Kazan, Vyborg and Samara. This manual contains examples of problems in land reservation which were witnessed while preparing land use regulations for those cities.

In the context of this manual, “land reservation” refers to the process of setting aside land for the future construction of necessary community facilities which support urban development. These facilities may include streets and utility lines, educational or cultural facilities, community centers or municipal offices, park and recreation facilities, environmental reserves, or any other facility of the common good. By virtue of their “public” nature, these facilities are not normally provided by private investors in the course of their construction activities. In the current period of economic transformation of Russia from a centrally planned economy to a system where the private real estate market is encouraged, land reservation generally means avoiding privatization of those lands which eventually will be used for these public purposes and maintaining them in the public trust. This trust may be guarded by either the local municipality (a “local agency”), one of the “subjects of the Federation”, or the Federation itself. Since this manual is prepared for municipal use, its thrust is geared to municipal issues of land reservation. The manual will be particularly useful for those communities which are involved in active programs of land sale, auction or lease where the placement of public functions must be considered in conjunction with these activities.

The manual is structured in two parts. The first part discusses the general problem of land reservation, specific case studies which have been identified from the land use regulation project, - and how land is reserved in countries with developed real estate markets. This part also presents some solutions to the issues raised. A key component of this discussion is the concept of “public needs”. The manual explores this notion in the context of Russian law and planning practice. The second part of the manual

illustrates how two practical problems of land reservation have been solved in the context of land privatization in Russia. The first problem examines a methodology of preparing an inventory of current land reservation; the second problem explains a technique for continuing reservation while land is undergoing privatization.

Part One: Land Reservation in Russia: Framing the Issues and Proposing Solutions

1.1 Introduction to Part One

The issue of land reservation in Russia is a relatively recent one. As the country undergoes its economic transformation, the major planning documents that guided city development, the General Plan (GenPlan) and the Projects of Detailed Planning (PDP), are being reconsidered with an eye toward attracting investment. Frequently, the “public” components of municipal projects have been neglected since only the profitable elements, such as housing or commercial development, are of interest to investors and have a potential return to the city. Consequently, many cities have a proliferation of grand integrated plans, but little wherewithal to complete them in their entirety. Cities increasingly are asking themselves, should we continue to hold on to land for the public benefit, or is it better to privatize land and gain from the tax revenue or rental income.

This part of the manual gives an overview of the problem of land reservation for public facilities and its historical evolution in Russian cities. It also explores how the issue is handled in other countries, particularly in the United States, with its long history of private land ownership. A major element of understanding the issue of land reservation is to understand the notion of “public needs”. This general notion is explored in the context of Russian cities. Finally some specific recommendations are offered which may help Russian municipalities deal with this issue.

1.2 The Need for Reserving Land for Public Purposes in Russian Cities

1.2.1. General Overview and Background of the Problem

Meeting the needs for the location of public facilities has been a normal process of city development for centuries. In ancient times, lands within cities were set aside for common use as streets, marketplaces, water viaducts, administrative centers and other functions which were defined as public needs. As those needs evolved over time, locations were needed for new uses such as schools, treatment of wastes, and public transport

routes.
Municipalities found ways of satisfying those needs through the acquisition of land and the construction of necessary public works.

In pre-Revolutionary Russia, the public needs were generally defined by the imperial government. Government ministers determined the public needs for education, health care, transport and sanitary facilities and created areas for the location of public facilities by imperial decree. Large scale urban development projects included specific locations for public facilities, which were largely determined by certain urban design criteria. As the system of private land ownership evolved in the 19th Century, the division of private and public property was defined by red lines which outlined the location of royal, church, state and private lands in relation to public streets.

During the period of extensive urban development at the end of the nineteenth century most cities were planned by central authorities around the rigid system of red lines. All public streets and utilities were placed between the intervals of the red lines. Other public needs, such as schools, hospitals and administrative buildings, were established on lands allocated by the state, the church or the royal government on land either within or separated from the red lines. Appendix A includes an extract from an historical encyclopedia which describes the bureaucratic procedures followed in 19th century Russia for the “expropriation” of land for public use.

After the 1917 revolution, most land reverted to general control by the state. During this Soviet period, large tracts of land outside the established urban core were developed based on the system of “mikrorayons” (similar to the Western Planned Unit Development - PUD), or small area plans, that are familiar in most Russian cities today. Red lines around these mikrorayons delineated the location of major roadways and utility lines. Public facilities which were needed by the residents were located on land within the mikrorayons. There was no need for land reservation because all land was considered for the public good and most private land rights were abolished. Major urban development occurred on the basis of the Plans for the Socio-Economic Development of the City (the GenPlan) and specific area PDP’s which often implemented the GenPlan. These were the two main documents of land management. All necessary territorial elements were included in these plans including housing, park and recreation areas, communal and educational facilities and elements of the transportation and utility systems which tied the PDPs to the rest of the city.
Overall capital construction plans were a collection of elements extracted from these plans.

Within this land planning structure, the notion of “reserved lands” referred to undeveloped lands located within the PDP plans, or lands not planned by PDPs, within and outside the city’s administrative boundaries, which were ascribed in the GenPlan for special uses, such as federal forests, military functions or other state uses. Suburban areas were considered areas where the city was meant to expand and where new public needs would be satisfied as the city grew. Occupied areas, such as suburban villages, which were incorporated within the city’s administrative borders were frequently demolished and their residents were relocated within the new mikrorayons which were created in their place. Many of these mikrorayons were completed through the creation of PDPs as integrated urban development projects. However, often only the residential portions have been developed due to the lack of funding to complete the plans, leaving a deficiency in the public infrastructure and public facilities.

This process of city growth has continued until recently and many of the features of the GenPlan and PDP plans remain in effect as the major guiding documents of city development. Standard construction standards and norms (SNiP), many of which were based on the PDP design requirements, continue to guide the construction of city engineering and transportation facilities and other elements of urban development. At present most land within cities is still owned by the state and municipal governments. However, the conversion to a modern real estate market is firmly underway in many cities. This transition from a centrally planned economy to a locally-governed, market oriented economy is resulting in new relationships between the city government’s responsibility to provide public services and the market in private land.

This problem is blatantly evident in new “cottage” type residential developments which are sprouting up in many cities. Most often these new developments, which were not common under the Soviet system, are occurring without the provision of essential engineering facilities and transportation access. Nor are the location of schools and other public facilities, which will be needed to serve the residents, in anyway considered.
The problems resulting from such developments and similar emerging issues of urban development are confounding local officials who have neither the administrative nor legal structures to require the reservation of land for essential services, nor do they have the financial resources for the development of infrastructure through the city budget.

In Western economies, where most land is under private ownership, a sophisticated system of providing land for public facilities has evolved. Under private ownership, land acquisition, the conversion of land from the private to the public sector, is often necessary for the construction of all types of public works. Land acquisition must respect individual property rights and lengthy and often costly procedures must be followed to gain

public ownership of land.

The transitional economic situation in Russia provides an opportunity to examine future needs for public facilities, and to reserve land which is needed to accommodate them. Land reservation for future essential services can occur before the encumbrance of private ownership and investment makes the procedures more complicated than they would be today. However, even in this transitional situation, major issues must be resolved, issues which relate to defining the scope of public needs, determining the location for facilities, defining responsibilities for providing public needs, and reserving essential land areas. Future issues will emerge with regard to determining ownership of facilities once they are built and for removing reserved lands no longer demanded by the city due to changing urban characteristics and needs. Also important is consideration of the legal, financial and technical mechanisms which will enable the reservation of land in “post-soviet” conditions.

As Russia’s economy goes through the current transitional phase, two forms of land reservation will be needed. The predominant form will be without the need for burdensome acquisition procedures involving purchase or taking of land from private owners. However, in select cases where ownership rights have been established, the need for purchase of land, or the rights of land ownership, will need to be considered. This manual will contain examples of both forms of land reservation.

1.2.2. The Nature of Public Needs for Reserved Lands

Two forms of reserved lands are needed to satisfy public needs. Public land is needed for the location of a broad variety of facilities required for essential services to serve regional or municipal development programs. In addition, land is needed for the protection of key natural, historic and cultural features which define the human and natural environment. In both of these cases, land may be needed for federal facilities, for facilities of the subjects of the Federation and for municipal facilities.

Many types of public facilities are needed for general physical urban development. At the federal level, land is needed for the creation of federal roadways, the construction of oil and gas pipelines, control over development of natural resources, and the establishment of military bases and settlements. Many of these features are already under federal control, and therefore the reservation of land for them is not a major municipal activity. Most municipal General Plans and established planning documents recognize the existence of federal land reservations within the municipal boundaries. Similar facilities are often required by subjects of the Federation.

Municipal needs arise when deficiencies occur in essential city functions. Such needs include the provision of the physical infrastructure of the city such as city engineering and transportation facilities, and the social infrastructure, such as schools and pre-schools, public health and safety facilities, and administrative and government structures. Establishing land areas to accommodate these facilities requires defining present and future needs.

Increasingly, municipalities are recognizing the need to reserve lands for the protection of key ecological, historic and cultural features of local, subject of the Federation and Federal importance. At the national level, these needs may include the creation of nature reserves and national parks and the preservation of nationally-important historic and cultural features.
Even at the subject and municipal levels, environmental concerns can enter into consideration of land reservation. Local areas of special ecological significance may include wetland areas, floodplains, special wildlife and endangered species habitats, all of which are important elements of the human as well as natural environment. Land is needed in cities for the creation and expansion of public parks and recreation areas. In addition special urban features of local significance, such as historic areas and cultural facilities, may be involved in land reservation. Reservation in these cases may include various levels from the restriction of the owners rights to the actual taking of land for these purposes if the current use is harmful to the protected object.

1.2.3. Case Studies of Current Problems from the Land Use Regulation Project

Since 1996, as part of an overall program of regulatory reform, a small group of Russian cities have contracted with USAID to write zoning regulations. Russian and international experts on land use have been working with local public officials to determine land use patterns, appropriate zoning parameters, and development review procedures tailored to local conditions. In the initial project, five localities were selected - the cities of Tver, Novgorad, Irkutsk and Pushkin and the area of Block 130 in the City of St. Petersburg. An expansion of the project rolled-in three additional cities, including Vyborg, Kazan and Samara. During the course of this work, a number of key problems surfaced which very clearly illustrate the complexity of the land reservation issue. These problems are not unique to these cities, but are common to cities everywhere in Russia today. An examination of these issues will be useful to construct effective solutions.

In Kazan: The City of Kazan has long planned the completion of a circumferential highway which would provide easy access around the city center. Portions of this highway have been built and the remaining portions have long been included in the city's GenPlan. The concept of this roadway is still considered by city officials as an integral component of the overall transportation plan and planning for the highway continues. Locations for major portions of this highway were reserved as elements of specific area PDP's. One such PDP, which is near the city center contains numerous individual homes. The residents of these homes have expressed a strong desire to improve their habitat despite the lingering possibility that they may be relocated as a result of the PDP plan. Currently, city officials are reviewing the PDP plan with an eye toward revising or eliminating it and allowing for the privatization of the individual homes. However, the plan to continue the ring road through the area remains valid. City officials question whether they should continue with the privatization in the area where the land was reserved for the new road. Since the previous administrative mechanism to create the reservation, the PDP plan, will be removed, they feel they lack the appropriate administrative or legal means to continue the reservation once the PDP plan is removed. Furthermore, they lack the economic information which would aid them in understanding the relative financial impact of decisions to reserve or not reserve the land for the highway.

In Samara: Samara has long planned on the development of a major new municipal stadium and a block of land for its construction has been indicated on the city's GenPlan. This land area currently is used for an assortment of low scale storage facilities, but for the most part is vacant. City officials believe the new stadium would modernize the city's sports facilities and allow them to compete effectively with other cities, and it would be a source of renewed civic pride. However, funds are lacking for the creation of the facility and it is uncertain when or if they ever will be obtained. During the zoning program the issue was raised over how or if the large land area for the future stadium should be zoned. As an interim measure it was decided to hold off zoning the land until such time as the plans for the stadium are finalized. However, the city questions how long that period will be.

In Tver: The existing land uses of the inner city neighborhood of Krasnaya Sloboda included two main patterns - residential and industrial. Part of the industrial area is located on a prime site adjacent to the Volga River. The residential area is divided into two main parts - large-scale, nine

story multifamily housing realized according to a PDP which was created for the entire neighborhood, and a large area of small individual wooden houses remaining form the unbuilt portion of the PDP. The residents of these small homes were informed of the PDP plan about ten years ago, and, consequently, refrained from investing in their homes. The industrial land was leased to firms on a short-term basis which is about to expire. The expiration of this lease will create new land for future residential development.

City officials have concluded that the original PDP plan is no longer valid and are exploring options for the redevelopment of the area which will be carried out through commercial investment. The redevelopment area will join the newly acquired industrial area with the established area of the PDP plan. Both the industrial area and the area of individual homes would be reserved for residential uses. One plan calls for construction of cottages close to the river and allowing the individual homes to redevelop through privatization. New low-scale multifamily residential structures would be created on the remaining land. A second option would raze the individual homes and replace them with similar low-scale multifamily structures. Meanwhile the plan would reserve land for schools and roadway widening.

In Vyborg: This northern city has reviewed all previous PDP plans and compiled an inventory of lands reserved in them for public purposes. These lands include reservations for new roads and highways, schools and other public buildings. In compiling this inventory city officials have realized that many of the facilities planned are no longer needed or are needed in new locations. They are trying to find the mechanism to review each of these land parcels and determine if the reservations are still valid, and an appropriate means for determining future reservations.

In St. Petersburg: A roadway project has been planned to clarify an intersection and to connect with a new bridge proposed across the Neva River. As part of a PDP, a reservation of land was created through a corner of a key industrial area at a time when the industry on the land was owned by the state. At present the City is negotiating the sale of the industry to private owners who will acquire the land area originally reserved for the new alignment. Through discussions with the future owners of the industry and an examination of alternatives, a new roadway alignment has been determined which keeps most of the industrial area intact and also preserves some of the nearby residential structures. Negotiations for sale are continuing on the basis of the new alignment.

1.2.4. General Approaches to Land Reservation in Relation to Overall City Development

In general, two approaches may be taken by municipalities in

reserving land. First the city may find it is necessary to reserve as much land as possible now, when the property is owned and controlled by the municipality. By avoiding the need to buy land in the future, after land is privatized, some city officials may see certain economies on the municipal budget. Many city officials, including architects and city planners, support this approach because they have considerable experience with controlling and managing city lands under the period of soviet control. In some cases city officials may use this approach to maintain control over lands beyond those lands which are actually necessary to fulfill public needs. This position is also supported by some foreign experts who understand the costs and logistical difficulties involved in returning land to public control after it has been privatized.

Another approach realizes that the reservation of land based on current planning models (the GenPlan and the PDP) has no time limitations.

Russian practice demonstrates that the reserved land may continue to hang in uncertainty and, in fact, may never be developed. In this case, the city may loose much more from lost property tax or rental revenues than it would have gained from sale or lease. It is possible that these losses may be even greater that those which would result from future repurchase of the land.

Only a detailed economic analysis performed on a case-by-case basis can determine which approach is most cost effective. However, as a general practice a combination of approaches would seem to be most valid for municipalities. Certainly it is necessary to reserve land for public needs, but only in the following specific cases:

- when there are concrete and realistic projects where public needs are clearly identified and may be implemented within reasonable time limits.
- when property owners have the means to challenge the restriction of their rights when the situation changes and the projected is not completed.
- when a mechanism is in place to cancel the reservation of land when there are changes in city development plans which negate the need for reserved lands.
- when landowners of reserved lands are given the opportunity to use their land within reasonable limits

Public accessibility to the land reservation process is very important. The determination of public needs by the federal, subject or municipal Duma should follow the process of public hearings to gain maximum public input. Programs should be published in the media and be given the opportunity for public discussion. After preliminary approval of the program, plans for their implementation are worked out which state the stages of implementation, time limits, sources of financing, strategy of

administration actions, investors, and a concrete scope of work. Final plans for the reservation of land are negotiated between city officials, developers and the public.

Owners of land parcels which are in the process of registration who find their land is in areas reserved for the construction of new roads or public facilities must ask themselves the following questions:

- Should they purchase or lease the land which is burdened by the reservation?
- Should they invest assets in the rehabilitation of buildings located on the reserved land parcel?
- Will the land and improvements be available for future purchase and at what cost?
- How will the construction of new roads or public facilities nearby reserved lands affect the value of their real estate?
- Are administrative agencies likely to abandon the idea of building the proposed facility, and are they likely to compensate for the loss of value as a result?

The remaining sections of Part One of this manual will describe the international experience in providing land for public facilities, the legal background for reservation of land in Russia and the notion of “public needs” as it applies to land reservation.

1.3 The Reservation of Land in Developed Real Estate Markets

1.3.1. Overview of International Practice on Land Reservation

An examination of the international practice of land reservation, in particular of those countries with fully developed real estate markets, provides a comparative basis for understanding the issues which may emerge in Russia as it undergoes its economic transformation. The research that was done in the preparation of this manual has identified at least four common attributes which apply to the legal systems in Europe and the United States with regard to the theme of land reservation. In all systems, government reserves land for the common good, taking into account a firm definition of the public interest. Land reservation is an open practice, subject to public discussion and input. All systems provide for some sort of compensation for land reserves from private landowners. Finally, land is reserved for a defined period of time before which improvements are made or the land returns to the land market.

European civil law and common law practice in the United States have several distinguishing characteristics which are inherent in the philosophy of each legal system. In general, civil law allows a broader definition of public interest and gives greater latitude for government to

exercise the public will over a parcel of land. The French Code de l'Urbanism, for example, allows for assertive action on the part of government entities to determine the needs for slum clearance, including the acquisition of property, relocation of residents, demolition of structures, and reconstruction. A detailed procedure is included in the law through which these actions take place and government must draw the connection between the land reservation and established urban development policy. A procedure is also provided for aggrieved property owners to appeal the decision to acquire land, and occupied buildings can only be transferred for temporary use before a decision on the final use is made. Other protections require that the decision to reserve land be made for public facilities and not for financial arrangements or investment purposes. Compensation is the final act of land reservation. Once a property owner is paid and the property is conveyed to the public trust, the land is no longer considered as reserved.

By contrast, in the United States, unless a property owner is a willing participant, a strict test of the public interest must be passed before land can be acquired. The definition of this public interest is naturally quite narrow and alternatives to the proposed action must be thoroughly investigated. Alternatively, in U.S. practice land is reserved through such established public actions as subdivision, zoning site plan review or environmental impact procedures. In specific cases, these local actions which are governed by state enabling laws, may provide for easements, covenants or actual land reservation for impacts that may be caused by the land use change. A more detailed examination of the U.S. experience with land reservation follows.

1.3.2. U.S. Experience with Land Reservation

An examination of the means for acquiring land for community facilities and other public purposes in the United States offers an illustration of the practice of land reservation in a fully-functioning market economy.

In practice, currently cities in the United States have no formal mechanism to "reserve" land, since most urban land is in private ownership; therefore the location of a public facility more often requires extracting a land parcel from the private sector through some form of acquisition, than from reserving land from the public trust. Nevertheless, there is a strong history of providing areas within municipalities for public needs, and the legal mechanisms for acquiring needed land are quite sophisticated.

In colonial America, land was granted in the organized colonies by the British crown through the action of the Governor of each of the colonies. When settlements were organized and towns and villages were

established, land was reserved from private ownership for the creation of facilities for common benefit. Plots of land were reserved for a church, meeting hall, school, public offices and often land for a public marketplace, a common grazing area and homes for the town teacher and minister. Streets and rudimentary engineering facilities tied these plots of land together and through common use eventually became public property.

As villages grew into cities, a more systematic approach to city planning took hold and communities became organized with areas reserved for public streets, utilities, and other facilities. The famous early pattern of streets and public parks and squares in Savannah, Georgia, and the plans for colonial Williamsburg, Virginia, Annapolis, Maryland and Philadelphia, were early examples of reserving land for public functions which were based on guiding planning documents. Later, the design of the nation's capital in Washington reserved vast areas for the public facilities which would be required for the federal government, as well as local community facilities for the citizens of the city. In each of these cases, the plan was carried out through a system of land acquisition through compensation of private owners, or, in rare cases by the creation of new land on landfills.

In the 19th century, the procedures for subdividing land for the expansion of cities was common. This was done by laying out a system of streets on private land around which the subdivision was organized. As the subdivision occurred and land plots were sold off by property owners, the streets reverted to the cities for public ownership and maintenance. Utility lines were generally established within the street system, and in some cases land was taken out of the subdivision, "reserved", for the creation of parks, public squares, and sometimes schools or other public buildings. The expansion of the grid over the land of Manhattan provides an example. In 1811 the city commissioners drafted a plan for the layout of streets and avenues over all the private property which was held outside the original city center. The now familiar grid system was created to facilitate the subdivision and eventual sale of the property by the private interests who held ownership. Large blocks measuring 800 ft. x 200 ft. were created. Within these blocks individual lots typically measuring 100 ft. deep and 25 ft. in width were formed. As they were sold and homes were built, the city undertook improvements in the intervening system of streets.

Many cities followed a similar system of land development. Aside from the streets and sometimes major transportation facilities, little land was reserved for public needs. When a need arose, such as a school, government building, or utility service land was acquired through purchase, donation, dedication, easement or covenant, or the complicated legal procedure of condemnation through eminent domain, whereby land is acquired for the

public good regardless of the property owner's desire. In actions of eminent domain the public need for the land must be firmly justified, and projects for which the land is taken must be financed and ready for construction.

Now, the procedures for land acquisition are firmly ingrained in the American legal system. It would be useful to sketch out how public needs are identified and locations are found for the development of needed public facilities. This process varies considerably from community to community.

In many cases there is no formal process at all. When a need arises, it is placed in the public budget by the governing body (usually the City Council) and land is acquired purely on the basis of its suitablity for the community facility, availability and cost. However, many cities follow an established if somewhat general process of defining needs and locating land to accommodate them.

Various planning documents, such as a city's Master Plan, Strategic Plan, or more specific land development or subdivision plans, generally contain a thorough analysis and projection of the need for new facilities. These needs are usually based on published planning standards that are determined through professional analysis. If needs are properly analyzed, the plans may identify needs for new or expanded schools, public buildings, park and recreation areas, utility services, new streets and other elements of the transportation system. A Strategic Plan more specifically identifies the timeframe in which the needs will occur and the impact on the city's budget for providing these facilities. These documents serve as the basis for further discussion and eventual inclusion of the facility in the city's statement of capital needs and the city budget.

Many cities also have an official City Map which is provided for in many state planning enabling laws. An official City Map is a document which shows the location and land boundaries of present and proposed streets and utility lines. The location of proposed facilities is an indication of the city's intentions to reserve the land, and constitutes an encumbrance; but compensation for the encumbrance does not occur until actual land acquisition takes place using the one of the techniques described below. Therefore, the property owner is free to use the property with the expectation that someday the property will be used for the public purpose.

Once a facility is budgeted an action of "site selection" occurs, whereby alternative locations for the facility are evaluated and positive and

negative features of each site are weighed. Ultimately a decision on site selection is made by a body of public officials after public discussion. Although an ideal site may be identified, more often than not, ease of acquisition and cost of the land are primary factors in making the decision.

Once the decision is made, the process for acquiring the land is undertaken. Various options for acquisition are available depending on the status of the land and the willingness of the owner. Sometimes an owner may give the land to the city often in exchange for certain tax benefits in a process called donation. Land exchanges may occur whereby the city gives the property owner land in another part of the city in exchange for the desired property. Sometimes there is outright purchase, or a purchase of a specific element of the property rights. Sometimes the property is dedicated to the city for a specific use with the anticipation of compensation when the land is ultimately acquired. Dedication is a form of servitude which prevents the owner from selling the property to another party, in exchange for certain tax benefits or compensation. Finally, there is condemnation of the land through the right of eminent domain which is discussed above. This procedure is usually undertaken in urgent cases where the owner of the property is unwilling to sell and where other acquisition alternatives are not available. Just compensation is required for lands thus taken.

Because of the costs of traditional acquisition to the city, many cities are seeking new means for finding land for public facilities. By reverting to the original subdivision procedures, some cities require the provision of public facilities as a condition of subdivision approval. Locations of schools, parks, sewage treatment facilities and other serves may sometimes be located in this way. Through environmental reviews certain mitigation may be necessary based on the defined impacts of a project. In this way private developers may be required to provide sites, or even contribute to the construction of public facilities. Joint development whereby the city and private developers enter into an agreement to include a public facility in a private development is now often common. Conservation easements and other forms of servitude for public purposes also are common for the provision of communal and recreation areas.

An important feature of locating public facilities in the United States is the extent of public involvement. The adoption of city planning and budgeting documents require public hearing and, in general, the procedures for site selection and property acquisition are open to the public. As a practical matter, sometimes actual property acquisition negotiations which can influence the value of the property and the price the city must pay are conducted in less than public fashion. And there is no requirement that the

city formally announce these negotiations. An open public announcement of the city's eminent purchase of land for a public facility may be greeted with undue fluctuations in property values and the availability of the land.

1.4 Current Legal and Practical Basis for Public Land Reservation in Russia

1.4.1. The Status of Legal Documents Pertaining to Land Reservation

An analysis of the current Russian legislation regarding land reservation allows us to draw a conclusion that the legislators have not paid enough attention to this area of public relations. Absence of special legislative acts of the Russian Federation which contain a clear definition of land reservation; which regulate procedural issues connected with making decisions on reservation; which define the authority of government agencies at different levels (including local and specially authorized government agencies) regarding reservation creates a lot of problems in the practical application of this regulating mechanism for relations in the area of land use and urban planning.

Another important problem today in the area of regulating land reservation is the long drawn out process of adopting a new RF Land Code which will direstly regulate these legal relations, as well as postponed effective date of Article 17 of the Civil Code which contains basic provisions regulating the issues of taking land for state and municipal needs which is a direct, integral part of the reservation process.

It is rather logical to start this overview of Russian legislation on reservation with an analysis of legal acts where the primary authority of government and local agencies is defined, where specific decision making powers on reservation issues are delegated to them. The participation of federal government agencies in land reservation and decisions making on the taking of land for government needs (here federal) is stipulated in the following provisions of current legislation:

The RF Constitution regards the following areas of public relations as the jurisdiction of the federation:

- federal government property and its management (clause d, Article 71);
- establishment of main principles of federal policy and federal programs in the area of government, economic, ecological, social, cultural and national development of the RF (clause e, Article 71);
- federal power systems, atomic power industry…, federal transportation, lines of communication (clause i, Article 71);

In addition, the following issues are within the mutual jurisdiction of

the RF and the subjects of the RF:

- issues of possession, use and disposition of land, mineral recourses, water and other natural resources (clause c, Article 72);
- use of nature, environmental protection and providing for ecological safety, specially protected nature areas, historical and cultural preservation (clause d, Article 72);
- administrative, administrative-procedural, residential, land, water and forest legislation, legislation on mineral resources and environmental protection (clause k, Article 72).

The authority of government agencies of subjects of the RF regarding land reservation and decision making on taking land for state needs also follows from the above listed items of mutual jurisdiction. Moreover, according to Part 4 of Article 76 of the Constitution, in the areas which are not under the RF jurisdiction or mutual jurisdiction of the RF and the subjects of the RF, the subjects of the RF implement their own legal regulation including the adoption of laws and other legal acts.

The authority of local agencies regarding reservation and decisions making on taking land for municipal needs can be implemented by them based on the subject matter of jurisdiction local agencies contained in Article 6 of the Federal Law # 154-FZ “On General Principles of Local Self-governance in the RF” dated 24/08/95(hereinafter referred FL 154).

According to Part 2 of Article 6 of this law the following items are under the jurisdiction of local agencies:

- possession, use and disposition of municipal property;
- integrated socio-economical development of the municipality;
- regulation of planning and development of the municipality;
- establishment of conditions for residential and socio-cultural development;
- organization, maintenance and development of municipal electrical, gas, heating and water supply and sewerage;
- municipal road construction and maintenance of local roads;
- maintenance of the area of a municipality and planting greenery.

According to Part 3 of Article 29 FL 154, local agencies can establish land use conditions for the benefit of the society, in compliance with the law, for lands which are within municipal boundaries.

In addition to the above mentioned primary authority of government and local agencies, legislation can assign separate powers on land reservation issues to special government agencies and departments. For example, according to the Provisions on Federal Road Service of Russia adopted by Resolution #1033 of the RF government dated 03.08.97, the federal road service in Russia, pursuant to the goals assigned to it and in the prescribed

manner acquires land and takes steps to reservation of land needed for construction and reconstruction of federal highways and other transportation sites which are federal property (clause 22, Article 6 of this Provision).

A special category is formed by the authority of the RF Government, executive agencies of the subjects of the RF and local agencies connected with regulation of the legal regime for specially protected nature areas which can be derived from the provisions of Federal Law #33-FZ “On specially protected natural areas” dated 14.05.95 (hereinafter FL #33). This law provides a definition of specially protected nature areas as areas of land or water surfaces and air above them where natural sites are located which are of special nature protection, scientific, cultural, esthetic and recreational importance, which have been completely or partially taken out economic circulation and for which there is a special protection regime.

Taking into account the special features of these areas and the status of nature protection sites located on them, they are divided into the following categories: state nature protection areas including biospheres; national parks nature parks; dendrological parks; botanical gardens; cure areas and recreation zones. In addition to the ones mentioned above, the Government of the RF, executive agencies of the subjects of the federation and local agencies can establish other specially protected natural areas (city forests, city parks, riparian zones, river systems, natural landscapes and others) (clauses 1 and 2, Article 2 of the FL #33).

All specially protected nature areas are taken into account when developing comprehensive territorial maps, maps of land management and regional planning. Based on the approved maps of development and location of specially protected nature areas, government agencies of the subjects of the RF make decisions on reservation of land parcels which will be declared specially protected nature areas and they make decision on restrictions regarding economic activity within these areas (clause 4 and 5, Article 2 of FL #33).

Specially protected nature areas are of federal, regional and local importance and, consequently, are the subjects of federal property, property of the subjects of the RF or property of municipalities (clause 6, Article 2 of the FL #33).

The authority of government and local agencies in land reservation issues connected with taking of land for state and municipal needs will be discussed below in the analysis of separate provisions of the existing Land and Civil Codes.

The next subject of this analysis will be a special category of legal

relations where the process of land reservation is related to a taking of land for state and municipal needs. The authors devote special attention to this category of legal relations because first of all, it represents a significant part of land reservation cases especially urban and other lands of intensive economic use, and secondly, it directly touches upon economic and other types of legal interests of legal entities, natural persons and citizens - land owners and users.

The protection and guarantee of land owners and users rights while implementing land reservation connected with a taking of land for state and municipal needs are the direct responsibilities of the state as one of the subjects of these relations which emerge from the Constitution of the RF:

1) The right of private property in the RF is protected by law. Nobody can be deprived of his property other than by a court decision. A forced alienation of property for state needs can be conducted only with the condition of advance, and equal compensation. (Clauses 1 and 3, Article 35, Constitution of the RF).
2) Citizens and their associations have the right to hold land in private property. Possession, use and disposition of land and other natural resources are implemented without hindrance by the owners, if this does not harm the environment and does not violate the rights and legal interests of other parties. (Clauses 1 and 2, Article 36, Constitution of the RF).
3) Everybody is guaranteed judical protection of his rights and freedoms. Decisions and actions (or failure to act) of government agencies, local authorities, public associations and officials can be appealed in court (Clause 1 and 2, Article 46, Constitution of the RF).
4) Everybody has a right to be compensated for harm caused by illegal actions (or failure to act) of government agencies and officials (Article 53, Constitution of the RF).

Taking into account the above cited fundamental articles of the Constitution, Russian legislation also reflects these provisions in other legal acts which regulate the sphere of legal relations that we are examining, specifically, the RF Land Code and Civil Code.

Article 52 of the current Land Code which codifies the rights of land owners, land users and lessees establishes that land owners have the right to receive the value of their land if it is purchased for government and public needs and have a right to compensation for damages related to such purchace, (Clause 7 of this Article).

Further, pursuant to Article 55 of the Land Code, the taking or purchase of land from citizens for state and public needs can be accomplished after they are allocated, at their request, an equivalent parcel

of land by the local agency; after construction of residential, industrial and other structures on the new site in place of those taken by enterprises, agencies and organizations for whom the parcel was acquired; and after full compensation for all other damages including lost profits. In a similar way, land is taken for state and public needs from legal entities regardless of their form of ownership or legal organizational structure.

Transitioning to an analysis of the provisions of the RF Civil Code (hereinafter CC) which regulate the issues of takings of land and other real property for state and municipal needs, it is necessary to note once again the situation that Chapter 17 of the CC which contains the primary part of these provisions (Articles 279-283) enters into force when the new Land Code is adopted and, therefore, today it only fills the role of useful information. However, a number of the CC provisions which are not in the above-mentioned chapter and, consequently, which enjoy full legal effect can be used without any reservation.

Article 239 of the CC, which regulates the process of alienation of real property due to a taking of land on which this property is located, establishes that in cases when taking of land for state and public needs is impossible without termination of property rights to buildings, structures and other real property located on this land, then this property can be taken from the owner if the state buys it from the owner in the manner stipulated in the Code. Also, the demand to take the real property shall not be satisfied if state government or local government agencies which have brought this demand to court not prove that the use of land for purposes for which it is taken is not possible without termination of ownership rights to the real property.

Further, Article 354 of the CC establishes that in cases where property taken (purchased) for public and municipal needs is the subject of a mortgage and the mortgage (the owner of the property) is given another property or appropriate monetary compensation, the rights of the mortgage shall apply to the property given in exchange or the mortgagor acquires the right of preferential satisfaction of his demand from the compensation due to the mortgagee. The mortgagor also shall have the right to demand accelerated performance of the obligation secured by the mortgage.

The provisions of Chapter 17 of the CC which regulate the issues of a taking land for state and municipal needs, will be reviewed as follows:

1. The decision-making procedure for taking a land for state and municipal needs.

A decision on the taking of land for state and municipal needs is

made by the federal executive agencies or by executive agencies of the subject of the federation. The government agencies authorized to make decisions on a taking of land for state and municipal needs, and the procedures for preparing and adopting these documents should be defined by the federal land legislation (Part 2, Article 279 CC RF). Unfortunately, as mentioned above, federal legislation regulating these issues is not in effect today. However, from the substance of the above cited article, it follows that the decision on a taking of land for municipal needs is made by an executive agency of the subject of the federation and not by a local agency. A local agency can participate in preparing such a decision by preparing a justification for it and by requesting the executive agency of the subject of the federation to approve this decision.

The decision of a government agency to take land for state and municipal needs shall be registered in the agency which is responsible for land registration. According to clause 1 of Article 9 of Federal Law #122-FZ "On State Registration of Rights to Immovable Property and Real Estate Transactions" dated 21.07.97, the registering agency is a Ministry of Justice agency for state registration of rights to real property and real estate transactions within the area of the property's (land parcel) location. The owner shall be informed about the registration and the date of its execution. (Part 4, Article 279, CC).

A direct purchase of land being taken is conducted by the RF, the subject of the RF or the municipality, depending on the needs for which the parcel is being taken. (Part 1, Article 279, CC).

2. Methods of taking land for state and municipal needs.

According to Part 1, Article 279 of the CC, land can be taken from the owner for state and municipal needs by purchasing it. As a rule, the entire land parcel is subject to purchase and taking. It is possible to purchase a part of a land parcel only with the consent of the owner (Part 5, Article 279, CC). Also by agreement with the owner another land parcel can be allocated to him in place of the one taken for state and municipal needs, by deducting the value thereof from the purchase price. (Part 3, Article 281, CC).

3. Procedures for setting the purchase price of a land parcel being taken for state and municipal needs.

The purchase price of a land parcel being taken for state and municipal needs, terms and other conditions of purchase are defined by an agreement concluded between the landowner and an authorized agency of the RF, subject of the RF or a municipality depending on for whose needs

the land being taken (Part 1, Article 281, CC). When determining the purchase price, the market value of the land and the immovable property located on it shall be included therein, and also all losses caused to the owner by the taking including losses which he bears in connection with the early termination of his obligations to third persons, including lost profit.
(Part 2, Article 281, CC).

4. Rights of the owner of a land parcel being taken for state and municipal needs.

The owner of land must be informed in writing not later than a year before the forthcoming taking of the land by the agency which adopted the decision concerning the taking. The purchase of land before the expiry of a year from the date of receipt by the owner of such notification shall be permitted only with the consent of the owner (Part 3, Article 279, CC).

The owner of a land parcel being taken for state and municipal needs may from the time of state registration of a decision on the taking until an agreement is reached or a court has made a decision on land purchase, possess, use and dispose of this land at his discretion and make necessary expenditures to ensure the use of the land according to its designation. However, while setting the purchase price, the owner shall bear the risk of all costs and losses connected with new construction, expansion, reconstruction of buildings and structures on the land within the mentioned time period. (Article 280, CC).

5. Procedures for settling disputes related to a taking of land for state and municipal needs.

If the owner does not agree with the decision on taking his land for state and municipal needs, or an agreement on the purchase price has not been reached, the government agency which made such decision may sue the owner and take the case on land purchase to court. This suit may be filed within two years from the time of written notification of the decision to take on land for state and public needs. (Article 282, CC).

Based on the provisions of this Article, as well as on Part 3 Article 279 of the CC, we can draw a conclusion on general terms of land reservation connected with a land taking for state and municipal needs. If there is a disagreement between the owner of a land parcel being taken and the agency conducting the taking, and these disagreements can only be settled in court, then the total term of reservation is limited by the term of the suit submitted to the court at the request of the government agency taking the land and is two years from the time the written notification of the decision on the taking was forwarded to the owner. In case the government agency does not comply with the above-mentioned time frame, the court can deny this request, as a result the decision on the taking loses its

effect,
and, consequently, the reservation is terminated.

At the end of our review of the RF Civil Code regarding issues of a taking for state and municipal needs, we need to mention that all the above provisions in accordance with Article 283 of the CC are applicable in cases where the land being taken for state and municipal needs is held in an inheritable life estate or ownership.

1.4.2. The Practical Change in Land Relationships as a Result of Land Reservation

In the absence of a concrete legal basis for the reservation of land in Russia, let's look at how reservation has occurred in practical experience.

This discussion will help us understand the new types of land relations which
appear when land is reserved. An examination of a few examples where new land relations are created due to the need for the reservation of land will put
the problem of land reservation in better perspective.

1. In the construction of a federal road, obviously a relationship arises between the Federation, the subject of the Federation, the Municipality and private owners if the road intersects their property. If there is an agreement among the parties, the damage is covered from state funds and the purchased land becomes state property. The same situation could occur with a road of regional significance.

2. A municipality plans to build a new road on municipal land which was loaned to an agricultural firm. In this case, the strip of land is reserved
for a future road and therefore it cannot be transferred to third parties.

The land may continue to be used for agricultural purposes until the commencement of the actual construction; or, if the land cannot be used for the purposes for which it was intended, compensation may be requested for lost opportunities.

3. It is necessary to enlarge a road within a completed residential area and
parts of the land parcels along the roadway are included in the reserved area. The city may have to take the land required for the road construction. If the rest of the parcel becomes useless as a result of the taking, the municipality may be forced to purchase the entire parcel. Landowners may use these reserved areas until the actual construction of the road begins and we cannot assume lost opportunities. Since the municipal authorities can levy restrictions on the use of the taken strip, a
period of land reservation occurs until the actual construction begins. The creation of a servitude may be necessary for the benefit of the owners in case the land is not immediately purchased. If the land is transferred to a third party, the servitude remains until the end of the

reservation. If the road construction project is abandoned, then the servitude is extinguished.

4. More complicated types of relations between municipalities and landowners occur when the territory to be developed includes the land of old, single family residences that are in private ownership and the land is being used under an inheritable life estate (see the example of the Krasnaya Sloboda district in Tver discussed above). In this case, municipalities have to pay for the value of the buildings and provide the residents with an adequate place to live. However, payment is only made for the old structures and their value is seldom adequate to buy a new flat or house. That is why, in most cities, the only way to remove residents from land being reserved for public use is to give them apartments in municipal apartment buildings.

5. In the United States, during the development of a new area, a developer usually exercises a reservation of land for public needs by transferring the land for parks, streets, and schools to the city after the subdivision process is over. Such a transfer of land, as a rule, is a condition for approval of a new subdivision plan of a new area under development. The developer does not have the right to sell this land to a third party or use it for other purposes.

From these examples, we can see that there is a great deal of complexity in land relations that develop when a reservation of land occurs. These relations often become more obscure in Russia due to the many types of occupancy rights that have developed over the years. Investment of these rights can create situations where land reservation and the provision of public facilities is difficult even though, in theory, the municipality may own the land.

1.5 Defining Public Needs as the Foundation for Land Reservation

Because land reservation implies removing land from its revenue-generating potential both for investors and for the city, the decision to reserve land must be done with great deliberation. The objective is to balance various aspects of the public good. Is the public need for the land greater than the public value of using the land to increase the municipality's net worth? The procedures used by a community in defining public needs can be crucial to the way this question is answered. This section discusses the concept of public needs as an important component of the decision to reserve land.

1.5.1. The Concept of Public Needs

As mentioned previously, a precise definition of the concept of

“public needs” does not exist in the legal documents of the Russian Federation. As a rule, public needs are established by a straightforward list in the government socioeconomic development plans (GenPlans), plans for individual areas (PDPs), or other sociopolitical documents, and also in documents which clarify sociopolitical programs. These documents include plans for branches of the city’s economy, environmental protection programs, historical or cultural landmark preservation programs and other similar documents.

The socio-political documents may contain the goals for social development which reflect the need for resolving a particular public task, however they rarely set a monetary value for a needed facility and seldom quantify those needs. Therefor the concept of public needs remains ambiguous in these types of documents. Strategic plans, such as the draft St. Petersburg Strategic Development Plan, tend to be more specific in quantifying the needs and establishing the costs of fulfilling them. The following goals of that plan reflect the orientation of that document to meeting public needs.

Improving the city’s spatial structure, developing promising territories, including revitalizing the city’s historic center, supporting active city planning changes and developing the city and suburban transportation network.

reforming the city’s economy, including improving the city’s public transportation system.

improving the environment.

developing the city as Russia’s European Gateway.

developing the city’s cultural center.

All of these statements define directions the city intends to take to serve the public interest. These statements should be followed up in the plan indicating specifically what facilities will be needed to fulfill these goals.

In pre-Revolutionary Russia, education, health services, homeless shelters were funded from the state budget and by charitable institutions. Governor’s offices or churches were in charge of the money allocated to the regions. In those times, there was no unambiguous answer to the question “what can be considered a public need?” However, we should be able to assume that all sites of public infrastructure funded from the state budget and constructed for the benefit of the general population can be considered public needs. In these cases public needs are the types of land uses which are essential for public health, safety, welfare and convenience.

The draft Land Code (which is not expected to be signed into law) is quite specific when it discusses public needs. Within the context of discussing the nature of land parcels which can be included in the urban land classification, four types of property can be clearly considered lands held

in
the common interest to serve common public needs.

1. public land used for squares, streets, passes, roads, embankments, parks,
forests, boulevards, beaches and other sites which were constructed to satisfy public needs
2. land for transportation, communication and infrastructure facilities occupied by buildings of railroad, auto, sea, river, and air transportation facilities, utility and communication lines which were constructed for these purposes.
3. specially protected areas and areas of nature protection, recreation, health and historical significance, land for natural landmarks, national parks , botanical gardens, forests, land used for recreation and tourism and well as land with mineral springs, and land where historical and cultural landmarks are located.
4. land for military facilities and military restricted areas.

However, other urban land classifications also hold some element of public interest. Therefore, we can see that the concept of “public needs” cannot be defined exclusively from the public interest in the land. Essentially, the land must have a targeted use that implicitly defines the “public need”.

1.5.2. Public Needs and Targeted Land Uses

Both the existing Land Code and the draft Land Code contain the wording “targeted land use designation”. Targeted land use means that the land should be used in compliance with the designation established for the parcel by the governing body. If a parcel is not used in compliance with the
targeted designation, it can be taken. The concept of targeted land use designation derives from “socialist” times when all land in the country was federally controlled and managed, and the state was in charge of land allocation or taking.

Now that other types of ownership have developed, the establishment of a targeted land use designation restricts owners in their efforts to put the
land to its highest and best use and, thus, restricts ownership rights. Despite
a reference to the targeted land use designation, the draft Urban Planning Code contains no definition of it. Instead, the draft Code describes the concept “permitted land use”. That term means that the land owner can use his land in compliance with those land use types established by local legal documents for the city district where the land parcel is located. The draft
Urban Planning Code as well as other land use and development regulations developed in many Russian cities regard this provision as essential. Offering
options for use within general categories permits the flexibility a land owner

or developer needs to determine his highest and best use.

However, this does not mean that the targeted land use designation is not appropriate for new economic conditions and , in fact, in meeting public needs the acquisition of property must contain a “targeted land use” designation. It is likely the use of targeted land use will diminish as real estate markets in Russia mature. However, in new land relations, targeted land use can be applied to certain specific reservation issues and reserving land for public facilities may be considered a targeted land use.

1.5.3. Public Needs and the Use of Land

Some public needs may be satisfied without using new land resources. For example, the public transportation system can be improved without increasing the land required for operating public transportation; the quality of potable water can be enhanced by re-equipping the water treatment facilities at sites already in operation.

However, for new or significantly expanded community facilities it is highly likely that additional land resources will be required. New land for the location of transportation and utility infrastructure, schools, public administrative buildings and major urban design improvements will always enter into public needs. However, as land gains value in the current market transformation it will become increasingly difficult to justify land reservation. While the public needs may remain constant, the availability and cost of land may make it increasingly difficult to find the proper land. In such a situation cities must increasingly turn to new ways of meeting land based public needs and rethink the inclination to take land out of the land market. Thus, alternative ways of meeting needs may be necessary.

Among the techniques cities may increasingly turn to is ensuring that necessary community needs are included in investor driven development projects. The additional burden on schools, public infrastructure, public safety facilities, etc. must be thought of as an ‘impact’ of these development activities and the responsibilities for the satisfaction of public needs arising from these activities should be born by the investor. Conversely, it is in a developer’s best interest to include public facilities in major development projects in order to enhance the value of the project.

A consideration of the investor’s role in the provision of public services is essential if the efficient use of land resources is to occur. If a city

has a proper mechanism in place to tap this investor driven impact on public needs, then the need for municipal reservation of land is further minimized.
Nevertheless, not all public needs can be satisfied in this way. Land reservation is a key tool that communities have available now. However, judicious use of reservation along with alternative means of providing for public needs offers communities the chance to efficiently use scarce land resources and to maximize the true value of the land.

1.5.4. Standards and Procedures for Determining Public Needs

How are public needs determined for a community? We have discussed previously the role of the GenPlan in determining public needs. As the market transformation continues, this rigid plan's mandated targeted land use pattern will no longer have the strength in determining public needs as it once did. Municipalities will be relying on more predictable measures based on a combination of professional analysis and public input.

The use of professional standards for community needs will continue to be important as they have been in the past in the development of GenPlans and PDP's. The square meters of schoolroom space per pupil, or the sewage treatment capacity per capita, and other professional standards, will continue to take precedence in determining the need for public facilities.
However, increasingly, national standards must be reviewed against a city's specific social, cultural and environmental conditions. Water demands, for example, can and should be substantially different in Karelia, as opposed to Irkutsk. Local variations in national standards should be the norm.

The level at which public needs are met may differ drastically in each community. Some municipalities have better schools; others spend public funds on good infrastructure, roads, or public buildings. Due to varying economic conditions as well as the varying public pressures to provide services, not all communities are equal in their definition of public needs.
This fact directly influences the nature of the need to reserve land. Communities which desire better parks and recreation facilities or better infrastructure have a greater desire to reserve land for these facilities.

Professional standards do provide certain objective criteria which can be used to define the spatial requirements for public facilities. Such standards may include, for example, the amount of park area per 100 people, and the categories of recreation facilities required for each age group of the population. School area standards are also popular. Sewage treatment facilities, water treatment and other sanitary facilities all have population or area based standards which are determined by professional organizations or

by government. In Russia, certain SNiP norms offer benchmark standards for community facilities. However, the nature of standards and the values themselves change over time which means they are often inconsistently applied.

The procedure for defining specific public needs which require the use of land in a specific area - in other words the procedure for comparing the actual situation with the standards - is set by government. Typically, within the government, the determination of public needs is considered a planning function. However, increasingly communities have begun to systematically link this planning function to the development of the city's budget. In such cases, a city may develop a statement of capital needs which articulates the need for new or expanded public facilities on a periodic (usually yearly) basis. This statement is then woven into the city's capital budget, and as the funds become available, priorities are established In both cases, the needs statement and the budget, the documents are prepared pursuant to a public process and are subject to a public hearing. This step is essential if a true assessment of public needs is to be made. This multistage system of documents is typical for city planning systems of different developed countries and is stipulated by the fact that the process of search and further implementation of the decision is a complicated one for the state and local government agencies.

At present the social system of the RF defines two main levels which have a right to define public needs - the state level and municipal level. The state level includes the Federation and the Subjects of the Federation. Therefore, for purposes of our future discussions, we should bear in mind that the recognition and satisfaction of public needs can take place at the Federal level, the level of a Subject of the Federation and the municipal level.

1.5.5. Site Location for Public Facilities

The recognition by society of the need to expand a road or build a new pumping station, etc., as a rule, does not mean the immediate start of construction activity. First, it is necessary to find the resources and develop the construction planning documents. Second, it is necessary to resolve legal property issues with the possessors of the land which must be used in the process of satisfying public needs. Experience has shown that the period from the time of the recognition of public needs to the beginning of construction may be years or even decades. During this time a number of actions must take place:

Economic and physical feasibility studies should be undertaken.
Technical planning documents must be drafted.
Legal property issues must be resolved.
Financial resources must be acquired.
Engineering studies and design plans must be prepared.
Land must be acquired and actual construction must begin.

Site selection, however, is one of the most important and time-consuming steps. Alternative sites should be examined according to the goals set by the executive agencies and the legislative body which have defined the public need. Site selection could include the following steps:

Investigation of site conditions.
Determining ownership characteristics.
Determining the current city planning and zoning restrictions.
Evaluating planning options which support satisfaction of the given public need and which comply with design standards.
Assessing the cost of implementing a design solutions and the risk of implementation.
Assessing the capabilities of outside investors and the public budget.
Clarifying the cost to implement the decision and the risk of implementation, selecting the best alternative, drawing up a plan to implement the decision.

The following section suggests a comprehensive procedure for defining public needs, and for selecting sites to accommodate them.

1.6 Recommendations for Russian Municipalities

This sections contains some practical suggestions for Russian municipalities confronting the issue of land reservation. A model land reservation procedure will be presented which is crafted for the needs of local administrators considering land reservation. Also included are some recommended revisions in data collection and planning procedures which will reorient land reservation to an emerging real estate market. Finally some suggestions are set forth on national legislation which will aid in clarifying issues with regard to land reservation.

1.6.1. Model Procedure for Land Reservation: Steps from the Beginning to the End

a. Agencies Making Decisions on Land Reservation

Regardless of the agency responsible for implementing a plan for community facilities, the decision on reservation of land for construction must be made by the executive branch in the jurisdiction where the land is located. This should be a direct decision by the chief of administration, following input from all branches of the local government and the public.

Even in the case of a federal facility, local decision making is crucial. For instance, in the case of a federal road which is being proposed to pass

through land of several municipalities, the decision to build this road is made at the Federal level. However, the decision to reserve particular land for construction of the road through the local communities must be made by a local agencies based on the decision of the executive branch. Before the agency makes a decision, it starts negotiations in order to find the best acceptable way of laying out the future road in order to minimize the damage inflicted on land users as well as the municipal budget for purchase of the real property.

It may be necessary to execute a three-party agreement between the Russian Federation, subjects of the Russian Federation and each of the municipalities through whose land this road will pass. This agreement may contain provisions on the division of responsibilities, on the participation of all the parties involved, and on procedures for compensation to real property owners whose rights are affected by the construction of this road.

b. Preparation of a draft decision on reservation: rights of individuals and municipalities

When creating a list of rights and responsibilities regarding the decision on reservation, we must take into account that the reservation period shall be such that all property-related legal conflicts between the public (represented by the administration) and a private person shall be resolved in the most painless and economical manner. All persons who own land or have an inheritable life estate, a right of permanent perpetual use, or a leasehold interest in the land, and whose interests are affected by reservation, should have the following rights:

to receive accurate information about the reservation period and content of state or municipal plans in order to determine if their interests are affected by the reservation;

to determine losses caused by initiating a land reservation action;

to request documentation on the planning and design of the facility for which the land reservation is being made;

to seek redress in court if no agreement on the purchase price has been reached;

to request cancellation of restrictions on land use or cancellation of reservation if the established term for the reservation is not observed.

On the other hand the federal government and the municipality have certain obligations which they must fulfill. Among these are:

to consider alternative proposals for the persons affected by the land reservation action;

to accept, calculate and make known the losses caused by land

reservation from its inception;

to assist in providing professional interpretation of planning and design documents as an aid in understanding the reservation action;

to conduct a review of project documentation on the basis of which the reservation was established;

to observe the term for concluding and implementing agreements on real property purchase.

The government should strive to minimize losses incurred from initiating a reservation action. However, certain risks can be anticipated, particularly if a project is not fully developed prior to reserving the land. This may be anticipated and minimized if a municipality follows an important rule of thumb: Expected losses from ineffective use of the reserved area during the reservation period should be less than the cost of transformation of the area if such a transformation started without prior reservation. The expected losses and expenses must be calculated taking into account all possible risks.

c. The beginning of the reservation.

The time for the beginning of the reservation period is the date when the decision on reservation, stating the list of the reserved land and terms of reservation, is published by a local agency. The decision on reservation should contain:

a list of the land parcels which are designated as reserved land;

a list of rights and responsibilities of the administration and real property owners whose interests are affected by the reservation;

an indication of the period of reservation (up to the start of construction if the reservation is accompanied by the establishment of a servitude) or the time for the beginning of the land purchase procedure.

The reservation decision may contain general procedures for use of land parcels included in the reserved area. In particular, a local agency may establish restrictions on development (construction) such as the following::

a) construction on land reserved for governmental or municipal needs is permitted (in accordance with the Civil Code), but the losses inflicted due to the beginning of land transformation will not be reimbursed. In this case the

decision shall establish the date for appraising the real property that is subject to purchase;

b) construction of permanent buildings and structures, which may considerably increase the purchase price is not permitted during the reservation period. In this case, the period of reservation or the term for the beginning of real property purchase procedure should be established.

c) Cooperation between the administration and real property owners during the reservation period.

The parties to legal relationships for the reserved land may be:

the Russian Federation
a subject of the Russian Federation
municipalities (local agencies)
legal entities and natural persons who own the land; persons having an inheritable life estate, a right to permanent perpetual use of the land, lessees of land parcels located within the reserved area, and any persons whose interests are affected by the reservation.

The subject of the state's legal relation is determined by the level of the need (federal, a subject of the Russian Federation, or municipal). Legal relations between the Russian Federation and a subject of the Russian Federation, or a subject of the Russian Federation and a municipality are also possible. In order to ensure protection of rights of legal entities and natural persons to land in a democratic society, we consider it necessary to broaden the list of subjects of legal relations arising in the process of land reservation, and include the rights of possessors of adjoining land parcels.

d) Availability of information on land reserved for governmental and municipal needs.

There is no doubt land reservation will influence the market price of land. This means that the information system which tracks each reservation of land must be reliable and be responsible for any false information provided. The information system should be accessible to all potential investors. The system which most closely meets these requirements is the State Land Cadastre. We recommend that information on the reserved land should be included in the Land Cadastre.

The second way to track reservations is to create a new Urban Development Cadastre based on information from groups responsible for keeping "operational plans of red lines". One of the maps which will be kept by such a group will be a map of the reserved land. This way was chosen, for instance, by the city of Strasbourg: an association of communes created a Geographic Information System Department. All information on

the reserved land is kept at public expense, as well as at the expense of the proceeds from sale of the information (in a simple and processed form).

The Ministry of Construction of the Russian Federation adopted rules and standards regulating the procedure for creation and operation of a State Urban Development Cadastre" . The Cadastre includes information on "urban development standards", which implies that information on reserved land can be also included.

e) Monitoring and Cancelling the reservation due to cessation of governmental and municipal needs

The actual transformation of land is implemented gradually, step-by-step, over a long period of time. Very often the process is extended for such a long period that the original public needs may change or disappear altogether, which makes it necessary to expend public resources to continuously monitor the process of land transformation and its periodic match with public development objectives.

No doubt actual changes will occur only on some part of the reserved land. If we look at a map of reserved land of any Russian city, we shall see that some areas are reserved for many decades. Possibly, the original public needs for which this land was reserved has changed or even disappeared. Many areas must be excluded from the reserved land, but the procedure for cancellation of reservation should be similar to the procedure for establishment of reservation - i.e., the public body should recognize the cessation or transformation of the original needs and then resolve issues of paying compensation to the users of the reserved land taking into account lost profit, and only after that may the reservation be canceled.

Depending on the type of reservation, it may end at:

the time of transfer of rights from a private person to the municipality or the state in case of purchase of a land parcel;

the end of the lease period for leased land;

the beginning of construction if land owned by the government or municipality was reserved.

The end of reservation is confirmed by decision of the local agency.

1.6.2. Improving Planning for Public Needs

The reservation of land in an emerging, active real estate market in

local municipalities must be accompanied by strengthening and reorienting the basic premise of planning for public needs. The following set of recommendations will be important to strengthening this ability to plan for public needs and make judicious decisions for the reservation of land.

1. Revising the GenPlan

Plans for the Socio-Economic Development of the City (The GenPlan) prepared under the system of centralized planning contain major deficiencies if they are to serve as a document of the general will which outlines the scope of public needs. These plans need to be formulated in the public arena with satisfactory public input during each stage of their preparation. They should be publicly accessible once prepared so that citizens are aware of the plans for their city and take an active part in city development. Public accessibility of long-range plans gives potential investors greater confidence that their project both conforms to the long-range vision of the city and has the potential for public support.

2. Re-focus Long-Range Planning to be Strategically-Oriented

All long range planning should have a strategic focus in linking public improvements to the actual city budget process, the time frame for their completion and the responsibilities for carrying out the plans. Strategic Plans are more action oriented, and flexible than “end-state” master plans.

They focus less on visionary approaches to urban development, and more on concrete approaches to improving the quality of life and providing for public needs. Strategic plans should be prepared with adequate public input, as well as thorough involvement of all administrative units of the city.

3. Improving Short-Term Planning

Annualized budgetary cycles should be linked to a regular program of evaluating and identifying public needs. It is suggested that a yearly public needs statement be prepared though routine involvement of administrative departments and public hearings. These statements should be used by the city administration in determining annual appropriations.

4. Strengthening Ongoing Planning

Municipalities need to strengthen their capacity to do on-going planning by revitalizing information collection systems. Cities need to understand not only how effectively city facilities are being used and what improvements are likely to be needed, but basic facts and trends in economic and social factors which influence city development. Adequate and accurate information is necessary to assess public needs on a regular basis and to determine needed facilities.

1.6.3. Improving Information and Land Reservation Procedures

1. Open Up Public Information

Municipalities should freely share information at their disposal with citizens who need to make decisions concerning their property. Such basic information as the location of “redlines” and engineering or infrastructure servitude must be publicly available if new investment is to be attracted.

2. Compile and Evaluate Reservation Inventory

Part Two of the manual contains an example of an inventory of land reservation. This information is compiled from documents currently in force, but it is a necessary step to determine where current reservations are located. At a minimum this information gives a municipality a baseline from which to analyze public needs and to clarify relationships with property-owners.

3. Determine Expiration of Reservation Actions

When land is reserved though antiquated PDP or GenPlan actions there is currently no procedure for regularly evaluating the need for that reservation. Local agencies need to clarify when a reservation action is completed, or if it is no longer required. If it is no longer needed, the reservation should be extinguished.

Part Two: Practical Solutions for Land Reservation Issues in Russian Municipalities

2.1 Introduction To Part Two

The following two cases present actual instances involving aspects of the land reservation. In the first case, a method is shown for compiling an inventory of existing land reservations. This inventory is useful to sort out the degree to which land is alienated in the community so that decisions can be made as to how much of this reserved property is necessary to satisfy future public needs.

The second practical case illustrates a method for resolving a typical case of land reservation and the encumbrances caused by it on the land privatization process. Both of the cases are provided as illustrations of typical problems encountered by Russian communities today.

2.2 Creating an Inventory of Currently Reserved Lands

Among the initial actions a city can take with regard to land reservation is to create an inventory of currently reserved parcels. The purpose of this work it to confirm the legal status of land which was reserved for state and municipal needs under previous planning efforts - the GenPlan and PDPs.

The following method for creating an inventory of currently reserved lands was created in the City of Vyborg. That city was concerned about the vast amount of land that had been reserved by previous plans. Many of these areas continued to be encumbered despite the inadequacy of the plans and the disappearance of the public needs the reservations were designed to address.

The substance of this work involves an analysis of the approved design documents which contain proposals on land reservation; analysis of a status map of red lines; analysis of a land cadastre and completion of the general inventory list and maps of reserved lands. The objective of this work is to produce an inventory list of reserved lands, an inventory list of sites allocated for development with the provision that the reserved lands will be dedicated to the city, a map of reserved lands based on inventory results, a map of sites allocated for development, a list of vacant land for future public needs, a list of unfinished projects on land reservation, a list of vacant lands transferred in a different category.

For the initial investigation a sample form was developed. This form is designed to collect data on every parcel that has been reserved, the purpose for which the reservation was made and the time of the reservation.

The appropriate data is inserted in the table as illustrated in the sample form below. Each cell is encoded according to the type of land reservation, using the following categories:

- UDS - streets and roads construction
- SHK - schools
- DDU - pre-school institutions
- ING - engineering infrastructure
- ISK - education and art facilities
- SPORT - sport facilities
- MED -medical facilities
- ADM - administrative buildings
- PR - other construction

Each cell is numbered according to the type of reservation. A brief description of the purpose of reservation, name of the road section or a

building (or the name of the future owner) is inserted in the column “Purpose of reservation”. The beneficiary (The RF, the Subject of the RF, Municipality) and the name of the document which served as a basis for reservation is placed in the column “Status of reservation”.

Example of filling out the Sample Form.

Inventory List of Land Reserved for State and Municipal Needs in Vyborg

Cell Code

Purpose of reservation
Status of reservation
Total area in sq.m.
Category
Cell No.

Beneficiary
Basis for reservation

1a
1b
2
3a
3b
4
UDS
1
Road “Scandinavia” by-passing Vyborg
RF
RF
Government Resolution No. …dated…, Resolution of the Head of Admin. No.… dated…
260,800
UDS
2
Road Primorsk-

Vyborg Leningradska ya Oblast	Resolution of the government of L.O. No. …dated…, resolution of the Head of Admin. No….dated…					
UDS	3	Road to by-pass the city center, parcel 1	Municipal.	Resolution of the Head of the Local Admin. No….dated…		
UDS	4	Road to by-pass the city center, parcel 2	M	Resolution of the Head of the Local Admin. No….dated…		
UDS	5	Expansion and extension of Prospect Pobedy, parcel 1.	M	Resolution of the Head of the Local Admin. No….dated…		
SHK	1					

School
M
Resolution of the Head of the Local Admin.
No….dated…

ENG
1
Water treatment facilities for stormwater
M
Resolution of the Head of the Local Admin.
No….dated…

MED
1
Medical facilities
M
Resolution of the Head of the Local Admin.
No….dated…

Requirements for filling out the table of reserved lands and the map of sites allocated for development

A map is prepared on transparent paper (according to the traditional method) or as separate map layers (using GIS-method). The location of the boundaries of reserved lands are established according to the catalog of turning point coordinates and, if there are none, by defining coordinates on a topographic map (scale 1:500 - 1:2,000). Every cell must be encoded according to its code in the inventory list. An example of a map of reserved areas is attached.

Procedures for Acceptance and Approval of Work

All reports are transferred to the Land Use Commission together with an explanatory note. The Commission arranges for additional study, if required. The decision of the Commission on approval of materials together with the draft Resolution on approval of inventory materials is sent to the Head of the City Administration.

Entering inventory results in state land cadastre documents and state city planning cadastre.

Once the inventory materials are approved, the data on reserved lands can be incorporated in the state land cadastre and state urban planning cadastre.

Specific cases which may arise during inventory

The documents contain only “red lines”, and the areas subject to reservation for street expansion are not given. We recommend that the reserved areas be highlighted and incorporated in the list as cells.

Very often “red lines” mark land reserved for public needs (projects) which are no longer valid. We recommend that a list of such reserved areas be made and presented to the Commission (first) and the Head of the City Administration (second) to make a decision on cancellation of the reservation. It is possible that the local legislature will also act on this.

At times during the inventory, it turns out that a decision has been made on satisfaction of a public need, and some design work has been done in this respect even though the final decision on land reservation has not been made. In this case, it is necessary to put together a special list of incomplete projects and an assessment of the project’s status and present it to the Commission and then to the Head of the City Administration for issuance of a resolution on continuation, delay or completion of the design work

Insert Map “City of Vyborg Inventory of Land Reservations

2.3 Negotiating Land Reservation in the Context of Privatization

In this section we will discuss an example of implementing a land reservation that was created by traditional processes during the Soviet period and was carried through to the current period of land privatization.

This illustration shows how the earlier reservation burdened the process of privatization and how this problem was eventually solved. The example is taken from an actual situation and the procedures were developed in St. Petersburg, but it has been applied to an actual situation that currently exists in Vyborg. For convenience, we will refer to the city as “N”.

The illustration demonstrates the earlier planning assumptions that created the reservation in the first place. It shows the actual location where the model will be applied in four different parcels with four different conditions. The scenario assumes the owners of the buildings on the land have decided to privatize their land. When they apply for privatization, the land reservation becomes apparent. Through negotiation with city officials

they arrive at a resolution of the problem. The model is illustrated using maps and drawings and a model certificate of ownership of the land parcel which shows the land reservation.

The reservation was initiated during the early stages of GenPlan development. It was at this point that the initial reservation occurred and the land was encumbered. Public needs for a new road were determined by the highest government executive agencies. One of the documents containing a definition of the public need was the Plans for Social and Economic Development. The following excerpt from this document illustrates the philosophical basis for making this land reservation. It is typical of many GenPlans of the era:

“ The Plan of Social and Economic Development of the City of N.

to restrict further growth of the city and decrease is density, while simultaneously stabilizing the size of the population at the existing level and developing all branches of the economy without bringing in workers from other parts of the country

to ensure in the city and in the populated suburban areas a high standard for meeting the material and cultural needs of the citizenry by making broader use of the advantages of the socialist economic system and the progressive experience of modern soviet and foreign urban development;

to improve, by all possible means, the architectural and planning structure of the city; to preserve and renovate its historic center; to organize new residential districts;

to commission ... square meters of residential space, ... children pre-school institutions for ... applicants, and ... schools for ... pupils;

to construct the second part of the waste processing facilities with a capacity of ... cub. m. per year;

to solve tasks for improving the environment...”

(Adopted at a joint meeting of the City Committee of the Communist Party of the Soviet Union and the Council of City Deputies ...1980.)

The GenPlans of cities were developed based on documents at a higher political level. The goals and objectives set forth in such documents were expressed in more concrete tasks which established major directions for city development, functional zoning of the city, and the principles and standards for development of the public service system. One of the main

documents of the Genplan was the map for development of the street-and-road network and the city transportation system. A great deal of attention was paid to the map for development of the engineering infrastructure. The following extract which describes the thoroughfare plan is an example:

The GenPlan of the city of N.
Section “Thoroughfares, Streets, Transport”.

“... we propose creation of additional ring and radial thoroughfares, creation of bypasses for public transit... In order to increase the capacities of streets and roads on sites of location of districts of future development - we propose construction of the thoroughfare No 1...”

Fig. 1. Chart of the planning structure of the city of N. according to the GenPlan of 1982.

We should note that on the chart of the GenPlan (Figure 1) the exact location of thoroughfares was not shown; and legal problems with respect to real property were basically subordinated to general ideas of city development.

The search for the exact location of a construction project for public needs was conducted during the next stage - the stage of the Detailed Planning Project (PDP). The main document of the PDP-stage was the so-called Red Lines Plan, which established reserves for development of infrastructure facilities (streets, roads, engineering networks). As the basis for this document, the following materials were used: plan of actual land use, map of planning restrictions, map of transport and cultural/social services, map for development of engineering networks, and other materials. During this PDP stage, they calculated the compensation to be paid to land users connected with changes in the designation of land. (Figure 2 shows the Red Lines Map (reserved areas) for one of the city districts.)

Based on this map, we will consider four parcels where the designer proposes to construct Thoroughfare No 1, using not only the existing streets, but also partially developed areas. It was decided to demolish four, old one-story wooden residential houses on parcel No 1. The owners of these houses readily agreed because the city administration promised to provide them with individual apartments in new houses “with all the modern conveniences”.

On parcel No 2, the thoroughfare passed through the site of industrial enterprise P. It cut the site in two parts, and two existing buildings

were facing a new high-class thoroughfare. Evidently, during the preparatory stage, this decision seemed the most cost effective due to low construction costs. The enterprise and the corresponding Ministry agreed with the decision provided that the enterprise would be provided with a new site in the industrial zone of the city and would be relocated to this new site at the city's expense.

Parcel No 3, in the zone required for the road construction, contained an old one-story warehouse building. It was registered to the city "Vodokanal", and its cost on the balance sheet was close to zero. The Chief of the Department agreed to demolish the warehouse because it was too much trouble to maintain.

On parcel No 4, the designer had to propose partial demolition of the corner building on site M. in order to provide for a standard turn radius on the thoroughfare. The owner of the building agreed to its reconstruction provided that a new building would be constructed on the site at the city's expense.

The Executive Committee of the City Council reviewed the proposed decisions and approved them.

Fig. 2 Map of the area designated for construction of Thoroughfare No 1 according to the PDP of 1986.

This begins a new stage - the search for funds needed to design the thoroughfare, and then for its actual construction, relocation of the enterprise (P), construction of a new building in area M, relocation of people from buildings subject to demolition, and participation in construction of a new building for these people. As is often the case, the search for funds for road construction takes longer than is expected and by 1991 (the beginning of privatization) the project had not been implemented.

Under Russian legislation, owners of private houses were the first to acquire the right to privatize their land. They were waiting for construction to begin and for relocation to new apartments. However, they soon realized that they could only count on themselves and they did not wait for the promised apartments. They used their property (house and garden) as efficiently as possible.

When applications were submitted to the administration to privatize their land, it turned out that the rights of owners would be limited within the reserved area: they would not be permitted to rebuild their houses, and if the road construction finally begins, they would have to move to new land and make improvements to a new house, built for them by the administration. Perhaps they would be compensated for losses. The amount

of compensation and, more importantly, the time of construction were not clear from the responses of the administration. This caused the citizens, among whom were war veterans and other respected people, to appeal to the Mayor with a request to reconsider the thoroughfare construction.

The Mayor estimated that reconsideration of the project would be less harmful for the city than the court costs, construction of new houses and compensation for damages. The coming municipal elections also played an important role - the Mayor did not want to lose the support of his voters.

The reconsideration of the project was assigned to the local Architecture and City Planning Committee. The road construction specialists of the design company hired by the Committee thought it would be possible to relocate the axis of the road and to make the road narrower so that only a small undeveloped part of one of the land parcels needed to be reserved for its construction. However, because of the reduction of the overall width of the thoroughfare, there was a problem with installation of the water main and sewer line which required a six meter wide strip along the road. Now it was necessary to find a new route for the pipes and this entailed redesign costs and additional construction costs. A cost-benefit analysis of the new decision was made by the specialists and it showed that it was more reasonable to accept the new design decision. The Mayor’s order changed the targeted use of the land according to the proposed design.

(Figure 3 shows a map which illustrates the changed location of the area intended for construction of the thoroughfare.

FIGURE. 3 THE CHANGED LOCATION OF THE AREA
INTENDED FOR CONSTRUCTION OF THOROUGHFARE N 1.

The home owners request was satisfied; however, the plan for the design and planning work showed the redesign of the water and sewer line. So, the legal owners of the land began to prepare a new appeal to the Mayor, this time with a request for urgent construction of the water and sewer lines.

The buildings on the other “experimental Plot” in our example suffered the same fate during 1991-1994; the enterprises upon whose balance they were held were turned into corporations and the buildings were transferred to the ownership of the corporate enterprises. At the time the privatization plan was drawn up, the buyer did not research the current city planning restrictions, believing that it was more important to obtain ownership now than to possibly lose the real estate in the future.

In 1994, after publication of “The Basic Provisions for the Privatization Program after July 1994” (approved by Presidential Ukaz N 1535 dated July 27, 1995), enterprises received a realistic opportunity to privatize their land. For privatization, it was necessary that a building or structure owned by the enterprise be located on the land. The Ukaz also required that city planning restrictions on the area being purchased could not hinder the purchase.

The enterprises that owned the buildings requested the city administration (Property Fund) to sell the land to them. In accordance with the procedures for selling state land, the Property Fund requested information about previous legal rights and current city planning restrictions from the Land Committee and the Department for Architecture and City Planning. The information received from the Land Committee showed that the land belonged to the state and the parcels were not registered as real estate units. The Department of Architecture and City Planning showed that the objects of the sale contained areas reserved for construction for Thoroughfare N 1 even before privatization of the buildings. On parcel N 2 the area cut though the middle of enterprise P’s territory. Over half of the area of parcel N 3 was located in the area intended for the thoroughfare and on parcel N 4, a corner of the building belonging to enterprise M was in the area.

All three potential buyers, after receiving these conclusions, requested advice from consultants, specialists in the fields of appraisal and land law on whether to buy the land with the indicated targeted use or not to buy it. After evaluating the situation, the consultants provided different scenarios for each parcel. The scenario for enterprise P regarding land parcel N 2 was:

- to divide the land into three parcels - one for the future thoroughfare and its boundaries would match the boundaries of the reservation zone; the boundaries of the two other parcels would match the two remaining parts of the enterprise’s land;
- to purchase two parcels located beyond the reservation zone. It was highly likely that their market price would increase after the thoroughfare was constructed;
- to begin negotiations with the city administration about conditions for using the reserved land and to consider the following as possible options:

1) purchase now at a low price and then, at the beginning of construction, sell it to the city at the market price. The city gets the purchase price immediately and then annual land tax payments; however, the city would need money to repurchase the parcel in the future. The enterprise can use the land more efficiently now and hope for a return of the funds invested;
2) lease the land at a low rent (the same as the land tax or even lower).

The city gets less money now, but it does not have to repurchase the land in the future. The enterprise does not increase its assets, but it will be ready to release the land without compensation;
3) purchase the land with a servitude (the right of the city to build a road on this land conditioned upon the provision of tax benefits to the land owner. The enterprise can benefit from using aboveground or underground areas for transportation services. Of course, it can only be a long-term plan; however, the market price of this land in future should be high.

The scenario recommended to the warehouse owner on land parcel N 3:

- to register only the land under the warehouse as a real estate unit (without the adjacent structures) and purchase it;
- to demand that the city purchase the rest of the land immediately and pay compensation for lost opportunities.

The scenario for enterprise M on land parcel N 4:

- to register one land parcel as a real estate unit, and to define the part designated for construction of thoroughfare N 1;
- to purchase the land with the reserved part immediately. The enterprise will benefit if its owner needs to increase the charter capital;
- to ask for a “correction of red lines” from a design company in order to reduce or eliminate the reserved area. If the response is positive - to reissue land documents. The enterprise is running a risk of losing some money spent for “correcting the red lines” if it is not approved.

Figures 4 and 5 show a diagram illustrating suggestions of consultants.

FIGURE 4. DIAGRAM FOR REGISTERING LAND PARCELS OF ENTERPRISE “P” AND THE WAREHOUSE AS REAL ESTATE UNITS

FIGURE 5. DIAGRAM FOR REGISTERING LAND PARCEL OF ENTERPRISE “M” AS A REAL ESTATE UNIT

The enterprises accepted these scenarios and sent their proposals to the city administration. The consultants hired by the city administration to analyze the buyers’ proposals determined that enterprise M’s proposal regarding parcel N 4 could be accepted right away (purchase of the reserved part with a servitude). Regarding enterprise P’s proposal for parcel N 2, the simplest and the most reliable option for the city was the second one (land lease at low rent). The most difficult situation emerges with parcel N 3 whose owner demanded an immediate taking of the land and compensation for lost opportunities. The right to request compensation for loses is

guaranteed by the Land Code of the RF (adopted 23.04.91):

Article 55. Right Guarantee of Land Owners,
Land Possessors and Lessees

Taking or purchase of land for public needs from citizens can be fulfilled upon allocation of similar land parcels to these citizens by local Council of Peoples' Deputies. Construction on a new place by enterprises, organizations and companies, whose land has been taken for public needs, of residential and production facilities shall be compensated in full amount together with other loses including lost opportunities, according to Article 97 of this Code.

Taking for state and public needs of lands belonging to collective farms, agricultural lands and lands of scientific-research institutes and other state, cooperative, public and agricultural enterprises shall be fulfilled under the condition of construction, at their desire, of residential, production and other types of facilities in return for taken ones and compensation in full of all other loses including lost opportunities, according to Article 97 of this Code.
(Presidential Decree dated 24, December 1993, N 2287 abolished articles 97-99).

The consultants suggested that the administration try to reach an agreement whereby the land would remain in private ownership with an owner who would agree to a short-term lease at low rent. The administration can take one of the following practical steps:

- hire an appraiser and let him appraise the property for taking purposes;
- consider the estimated loses prepared by real estate owner;
- calculate reasonable compensation, taking into account its own calculations and the requests of the owner;
- try to find a new owner (lessee) of the land who would be able to pay compensation to the owner (totally or partially);
- try to settle the matter with the owner at a reasonable price and, possibly, agree on installment payments;
- be prepared to take the case to court or to arbitration court.

Article 54. Protection of Land Ownership Rights of Owners,
Possessors and Lessees

Interference of the state and other agencies in land use activities of land owners, possessors and lessees is prohibited except for cases of land law infractions.

Violated land rights shall be restored according to procedures on land disputes' resolution provided for by Articles 115-123 of this Code.

Damages and loses caused by land right violations shall be compensated in full amount.

Disputes on compensation of damages and loses shall be taken to court.

Of course the last case is more expensive for the public, and the city administration is right to be afraid of privatization of reserved lands.

In this connection we should mention that the fears of enterprise owners who invest in purchase of land and commercial use of real estate located within reserved zones are equal to those of the administration. This is because of the possibility of losing money if the administration makes a sudden decision to take the land and begin construction of the thoroughfare. In these actual situations concerning purchases of land with reserved areas, the owners refused to purchase the reserved areas designated for public needs (construction of a thoroughfare). The most important matter for them was acquiring precise data on the boundaries and time of construction.

Surveying activities and preparation of land documents

Let's take an example which extends the situation with the purchase of enterprise M's land. According to the consultants advice, the enterprise decided to purchase the land and the administration agreed to sell it together with the part designated for expansion of thoroughfare N 1 and the restrictions on the enterprise's right to construct and renovate buildings located on this part of the land parcel.

The land registration service (cadastre bureau) prepared a cadastre map; the Seller and the Buyer concluded a purchase agreement with the imposed restrictions; the Land Committee registered the transaction in the State Land Cadastre and issued a Certificate of Title. The example of the certificate is shown below.

The Russian Federation

City N

LAND TITLE

Series N. No. 00001

Issued on January 22, 1996, based on Presidential Order No. 1767 “On Regulation of Land Relations and Development of Agrarian Reforms in Russia” dated October 27, 1993, and land purchase agreement No. 371-ZU/500370 dated 24.11.95.

Corporation “M”, number in state register 780400000, acquires the rights to ownership of land parcel No. 47:B1:130:02, located in city N., in the South-Eastern industrial zone, total area 10,000 sq.m.

Land Category: urban lands
Targeted use of land: according to Land Use Regulation and existing City Planning documents. Part of the land parcel, shown as shaded area “A”, is designated for construction of a thoroughfare of municipal importance.

Restrictions and burdens imposed on land: on the part, shown as shaded area “A”, there shall not be any new construction or capital repairs to existing buildings.

This Certificate was prepared in two copies:
One for Corporation “M”
Second is kept in the Land Committee of city N.

Registering clerk Ivanova L.E.

Registration No. 08828 dated January 22, 1996.

Conclusions

As Russia becomes firmly a part of the global economic community, the creation of active real estate markets will become increasingly important.

Through the development of these markets, the true value of land resources will become more apparent, and the judicious use of these resources will become more important than it has in the past. In the past, the value of

land was only apparent in its ability to support human activities - for housing, for industry, for communal activities. Little regard was given to nurturing the primary resource itself, not only to preserve its intrinsic value, but to support the increasing array of demands put on it.

The need to reserve land for public and communal needs and activities is the natural outcome of urban development. In the vast plans of previous times, land reservation was not a major issue, because most land was under control of a single entity. In the scope of these plans, vast areas were set aside for public needs and major public works projects. Today, with a wide range of competing interests for land, it is no longer economically wise to automatically set aside vast areas and take them out of potential for investment and efficient use. Cities will increasingly be asked to balance the options of land reservation and private investment. As is demonstrated in this manual there is no automatic resolution to this problem. The decision to continue to reserve a parcel of land for a public need that has an undefined future, must be resolved on a case by case basis. However, this manual points to some steps that communities may take with regard to the reservation of land:

City administrations should undertake a careful inventory of all previously reserved lands. The currency of these land reservations should be reviewed in light of a realistic reappraisal of the planning basis for the reservation.

The city should carefully reconsider the public need basis for making land reservation. A public process for determining public needs should be instituted and made a routine element of the city's strategic planning.

The city should consider alternative means of meeting public needs, either through non-land-based options or through leveraging future private investment activities.

The city should be prepared to advocate and negotiate necessary land reservations in conjunction with land sale or long-term lease programs.

The terms of land reservation should be considered so that land areas are not unduly encumbered with no definite program of immediate use. A methodology should be instituted to continuously review the need for reserved land and for extracting land from the public trust and returning it to the land market when it is no longer needed.

The recommendations contained in this manual should serve to create an internal dialogue within the city administration to creatively deal with land reservation issues. The manual should be used in conjunction with the other manuals that have been prepared in this series to effectively address the

many emerging issues with the development of private, healthy real estate markets in Russia.

Appendix 1
Brokgauz and Efron , volume 40, page 314

Expropriation - the forced alienation of private property, its temporary taking, the establishment of servitudes or the limitation of rights to this property for public or state benefit. When an urgent state or public need (building roads, constructing buildings needed for state or public purposes, building fortresses, conducting military exercises, establishing a particular activity for public or state benefit, even if run by private parties, etc.) can not be satisfied without specific private property, then, with the approval of the appropriate agencies and in compliance with the conditions established by law, an expropriation of private real or personal property is conducted….

…every country has its own law of expropriation, which is similar in its principles but different in the individual terms which define the activity of institutions and regulate the basic cases of Expropriation.

1)Declaration of the public benefit of the activity for whose benefit expropriation is being conducted. As a general principle, expropriation is only permissible for the public good or interest; but a definition of the concept public interest is fraught with difficulty. The general good can encompass the interests of all the state's citizens; it follows then that expropriation should be permitted only if the interest of the entire state requires it. However, along with the interests of all the citizens, there are also public interests of individual groups of these citizens, of individual localities, or of individual local government entities - cities, zemstvos [local assembly in 19th-century Russia-trans.], communes, etc. A railroad can serve overall government purposes or local purposes; the requirement for irrigation or drainage is only encountered in individual localities, thus expropriation to satisfy this requirement serves individual citizens. In conducting expropriation for purposes of the entire state or for part of it, State authorities and local agencies are not always able to operate the activity for whose benefit the expropriation was conducted, and they are forced to issue a concession [license-trans.] to private entrepreneurs who are pursuing private advantages; as a result, expropriation is conducted not only for public but also for private interests. This is the source of the legislative attempts to issue directives to define the public interest and the source of the

disputes in the literature about who has the right to expropriate: the state, its individual agencies, especially local agencies, or also private entrepreneurs who have received a concession from the state. Some countries (Bavaria, Austria) tried to find a way out of the difficulty by listing individual cases of expropriation and delegating to the appropriate administrative authorities the power to resolve these cases. However, it is impossible to anticipate all cases of expropriation, and it is necessary to pass a special law for each new case, as happens in Austria. Another way out is to approve each case of expropriation by a special legal act, as used to be the case recently in England and as is done in Russia; but this procedure really slows down expropriation. In France, in spite of the inviolability of private property rights, there was an administrative procedure that permitted expropriation up to the year 1810. At Napoleon's insistence, the guarantee of private ownership was strengthened: the resolution of the issue of the nature of the activity's public benefit was administratively granted to the chief executive, and the examination of issues related to compliance with all the lawful forms of its implementation was assigned to the courts. By the law of 1831, activities in whose interests expropriation was permitted were divided into two groups: large state activities were subject to a legislative procedure of disposition, and small activities were subject to the administration and court. The work conducted with the resources of departments and societies, and of individuals who received concessions to develop minerals, were authorized administratively by the head of state. Special juries were also designated to conduct appraisals. The law of 1841 unified and supplemented the previous legislation; after undergoing changes in 1852, it was reinstated and supplemented in 1870. In Prussia, expropriation required permission from the crown, which was issued as a directive with the exception of less important cases (for example, streamlining or expanding roads, as well as converting private roads into public roads outside cities and settlements and for temporary takings of real property if the taking was for less than three years). As a result of the increased number of expropriation cases, the division of activities into more and less important, which is accepted in France and Prussia, becomes a more and more common practice, although, in theory, the opposition counters that it is difficult to implement. In this respect, the right to permit expropriation begins to be transferred from state agencies to local agencies.

In this regard, a very remarkable step was taken by English legislation in the law of 1894 on inland government, according to which the parish council and parish assemblies were delegated the power to decide on expropriation

of property needed for the locality's institutions for the public benefit. This is a radical departure from the old system of legislative disposition of cases to the transfer of cases to local agencies. In France, the laws of 1871 and 1881 vested the power to declare rural lines of communication for the public benefit in provincial general councils and department committees.

2) Preliminary investigation of the need for Expropriation and establishing a plan for it. To determine the need for expropriation, legislative and governmental bodies need reliable information on the reasons for the expropriation and on the composition and location of the property being expropriated. The investigation of these issues is the subject of a great deal of attention in legislation. In France, a declaration of public benefit may be made only after a preliminary survey to define the main area of the activity's work, its main components and a preliminary estimate of expenses. This initial information is posted in those locations where the expropriation will be conducted so that interested parties can present their objections. Then the plan is forwarded to a 9-13 member committee appointed by the prefect from local landowners, merchants or owners of industrial activities. After it obtains expert opinions, this committee forwards the entire case in its conclusion to the Ministry of Public Works. The plan compiled in this manner will serve as the basis for obtaining legislative approval of the activity. In England, in cases of expropriation conducted both by special legal acts and by parish councils, a preliminary hearing on the public benefit of the activity, the plan, expenditures and the property subject to alienation. All interested parties have the right to take part in the hearing in order to support or object to the need for the activity and the feasibility of the plan. In Prussia, an administrative hearing is conducted, but officials also resort to surveys to have a comprehensive discussion of the reasons for expropriation.

A characteristic feature of Western laws on expropriation is that legislative and administrative agencies that have the power to approve expropriation, issue a permit in the form of a general order without a detailed description of all the property subject to expropriation. The final drafting of the expropriation plan will be accomplished by the local agencies. For this purpose, in France, there is a second survey to protect the owners' interests by giving them an opportunity to object to their possessions being

including
in the expropriation plan. The plan is widely publicized. The objections are
referred for consideration by a special committee chaired by a subprefect and consisting of four members from department or district councils, the mayor of the community where the estates are located and one of the technical persons that will be doing the work. If there are new objections, the committee's resolution is forwarded for consideration of the Minister of Public Works. In Prussia, after approval of expropriation by a government act, the plan is also publicized; interested parties can raise their objections;
the decision is made by a special administrative committee and it can be appealed to the minister. In England, during expropriation by resolution of a local agency, a thorough hearing is conducted with the participation of all
interested parties. Disputes are settled by the Local government board that
can open a new hearing and, depending on the results, it can approve of or deny the suggested plan of expropriation. Thus, the beginnings of French law forms the foundation of all of the above-mentioned legislation. The special feature of France is that here the expropriation must also be approved by a court which examines the legality of all the preparatory actions. In the literature, there are objections against involvement of the court at this stage because it would only be reasonable if required to protect
the interests of private parties, and, consequently, based on their complaint.
Since the owners' interests require such protection, it is provided in all legislation, and, particularly, in case of any dispute about the size of the
compensation, therefore, a requirement for the court to check every expropriation without any complaints from the parties is superfluous.

3) The determination of the compensation for alienated property presents
the most difficult issue in expropriation. Establishing the appraisal of property being alienated and establishing the principles for appraisal have been and continue to be disputable issues for the groups touched by expropriation. Real property owners, who are interested in the highest price
for the property being alienated, have always insisted on a composition of local committees that would help them inflate the appraisals. This, by the way, is where the opposition to judicial appraisal comes from. The courts are
compared to either special administrative committees or expert committees. But no matter how important the experts participation in the appraisal is and no matter what the advantages of the administrative appraisal
committees are, the need for the participation of a court or of its separate
departments, is now universally recognized, at least as a level of authority
where the appraisals by the indicated institutions can be appealed. Thus, in
France, the price is set by special jurors (a jury), 36-72 of whom are

selected for one year from the people that have the right to vote and a permanent place of residence in the district; 20 of them are appointed for each session by the highest judicial body for the area. The local judge is the jury foreman. The issue of compensation is discussed publicly in the presence of the parties. The judge does not participate in rendering the final decision; it is subject to appeal only by appellate procedures. In Prussia, the appraisal is conducted, with the participation of experts and all interested parties, by the same administrative committee that draws up the alienation plan, but the decision of the committee can be appealed under general court procedures. In Austria, if the interested parties do not reach an agreement on the price of the property being alienated, the latter is set by filing a lawsuit. The same, or something similar, is established in other German legislation.

4) Basis for appraisal. According to the basic principle of the law of expropriation, compensation for the property being alienated should be full and fair. Full compensation is when all losses and damages caused to the owner by the expropriation are covered, and his property holdings have not lessened in any way compared to what they were before the expropriation. Since neither the state nor the private entrepreneur usually are not able to offer to the owner the exact same property that was taken, the compensation is an amount of money. The amount of money should be such that the owner will be able to obtain for it the same benefits and conveniences that he had when he owned the previous property. In other words, expropriation, like other cases of compensation for harm and damages, involves the definition of the owner's interest (XIII,262) in the property. For the compensation to be not only full but also fair, while defining an interest you should take into account a whole range of cases and circumstances related to the expropriation, and sometimes the interests of the activity for which the expropriation is being accomplished (for example, if paying a huge compensation to the owners will stop an activity that is of unquestionable public benefit). Other issues included in the price of the property are: a) an appraisal of the property at the time of expropriation but not taking into account prices preceding the expropriation or prices caused by the expropriation; b) occasional or temporary property price reductions or increases that result from political crises, political events, etc., should not be taken into account; c) special features of the estate (natural beauty, hunting, building design, etc.) are taken into account in the appraisal; in contrast, special, personal attachments of the owner to this particular property do not affect the price; d) improvements to the property, such as landscaping, erecting new structures or any other improvements made with the expropriation in mind or in order to increase the property's

price (French and Prussian law), are not covered; e) any increase in the price of the property resulting from establishing the activity for which the expropriation is being conducted in the area is not taken into account. Whether an increase in the price of the property or of alienated parts of the property, which increase is a result of the expropriation, should be taken into account is still a disputable issue. Under French law such a price increase “is taken into account"; but if the expropriation appears to completely eliminate any compensation, then the part that was alienated would be taken without compensation, which contradicts the basis of obligatory compensation for lost property.

The Russian Law of Expropriation differs in several respects which touch upon its advantages related to procedures for approving expropriation and property appraisal methods. The early Russian law of expropriation was based on an enumeration of individual cases of expropriation (article 575, vol. X, part 1, 1857: "when private real property is needed for public or state purposes, that is, for establishing or building water or land communications, for erection of needed state or public buildings, etc.) The existing law permits expropriation as an alienation of property, a temporary taking of it or the establishment of a right to take part in the property in all cases when required for the state or public benefit. Expropriation is approved according to the law based on petitions from ministries and departments to the State Council and according to His Majesty's decrees. The initial study of the need for expropriation and the make up of the property is administrative in nature; there are absolutely no provisions for the participation of private parties and the protection of their interests at this stage. In following His Majesty's Decree, the administrative bodies enter into negotiations with the owners of the property being alienated in the form of voluntary agreements or compensation based on the resolution of the appraisal committee. Estates being expropriated are described in detail by a local police official in the presence of two or three witnesses, primarily neighbors of the estate….

For alienation of land of the treasury, of His Majesty's cabinet or of a religious society, the representatives of these societies are invited. Parties participating in expropriation have access to the committee through written statements and oral explanations; experts may also be invited. The appraisal is conducted either on the basis of the property’s income earning capacity, if the owner request’s that, or on the basis of local prices and special

conditions where the property is located. The legislation does not provide detailed instructions on the make up and the price of the property; it only points out a specific case where a part of real property is alienated, then the compensation should consist not just of the price of that part of the property, but of the total amount that the owner's remaining property is reduced in value as a result of the alienation. Thus, the compensation reimburses the owner's entire interest in the property. The owner has the right to demand alienation of the property in full if the remaining part is of no use to him. The parties can object to the committee's resolution; then the decision may be reviewed. In any event, the entire case, with the governor's opinion attached, is forwarded to the appropriate ministry. Provided there are no objections from the entrepreneur and the property owner, and if there is no need to ask for a special loan, the latter decides the issue of compensation on its own. In cases of alienation for needs of railroads, the final decision in the case is made by the Minister of Communications if the entrepreneur's objections were considered to be unworthy of consideration; the minister's decision can be appealed within a month and then the case is referred to the State Council. The participation of judicial bodies in expropriation cases is totally ruled out here in Russia. Upon approval of the appraisal, the money is paid to the owner right away with an additional six percent from the day the property was taken. For the needs of railroads, property being alienated can be taken immediately after the need for it has been established, based on an inventory being prepared within two weeks (Art. 575-608, Vol.X, Part 1). According to established practice, third parties have an independent right to compensation. The disadvantages of Russian expropriation procedures are the extreme slowness of the procedure which is caused by its bureaucratic nature, and when there is an extreme shortening of the procedure, interested parties are denied any guarantee of fairness in the appraisal process. Arbitrariness can also be introduced in the process of the preliminary investigation regarding the composition of the property being alienated. The composition of the committee guarantees neither quick procedures, nor a fair decision. Each member of the committee has very little interest in the case; united actions are prevented by the subordination to different departments; the committees are influenced by local landowners both through the members and the governor. Higher level authorities do not always have sufficient material at their disposal to check on the data received from the committees. Payment of compensation is put off until the case is resolved by the ministry or state council; as a result, many owners, deprived of their property, suffer privations and become victims of speculators. Experience reveals a number of abuses in cases of expropriation that can only be eliminated by involving judicial bodies in the cases, by beginning publicity of cases during the

preparatory work on expropriation, and by easing the requirement for legislative approval of each individual case. Different committees have worked on the elimination of these deficiencies, but they have not led to the desired results.